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IN THE

Supreme Court of the United States

No. 577.

RICKERT RICE MILLS, INC.,

v.

FONTENOT.

BRIEF AMICUS CURIAE.

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Chicago, Illinois.

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This brief is filed for the purpose of supplementing the brief heretofore filed by the undersigned in the case of *U. S.* v. *Butler*, No. 401, herein, and is filed in behalf of the same clients. The requisite consents have been filed with the Clerk.

In the brief heretofore filed, it was argued that the AAA Act was unconstitutional because it transferred property without compensation, from the overwhelming majority of the American people and bestowed it upon a small minority, in violation of the Fifth Amendment. It was also argued that the Act violated the Tenth Amendment. The following facts which were not stated in detail, are stated in this brief.

THOSE TO WHOM MORE THAN A BILLION DOLLARS HAS BEEN TRANSFERRED.

To September 30, 1935, the total amount of processing taxes collected, and transferred to farmers was $938,500,792.45.*

The number of benefit contracts signed under the AAA Act have been as follows: 1933—1,625,748; 1934—3,012,079; 1935—3,020,173. However the number of farmers signing contracts was less than the number of contracts because in many cases the same farmer signed separate contracts for different commodities produced by him. Inquiry at the Department of Agriculture elicits the answer that the Department has not compiled the information as to the number of farmers signing contracts and the admission that in a number of cases the same farmer signed more than one contract.

From the above it follows that a sum exceeding $1,000,000,000, collected in so-called taxes, has been directly transferred to less than 3,000,000 farmers in pursuance of the general scheme to regulate and limit production.**

THE PEOPLE FROM WHOM MORE THAN ONE BILLION DOLLARS WAS TRANSFERRED TO LESS THAN THREE MILLION FARMERS.

On page 16 of its brief in opposition to the petition for a Writ of Certiorari and motion for the injunction in this case, the Government makes this statement: "When the tax is paid, it is generally passed on to the first and subsequent purchasers." This statement is unquestionably true. Al-

*As part of the same general scheme to regulate production, millions more have been collected and transferred to growers under the Tobacco Control Act of June 28, 1934 (Title 7, U. S. C. A. Sec. 753), which was held unconstitutional in *Penn* v. *Glenn*, 10 Fed. Supp. 483. The Potato Control Act of August 24, 1935 (Title 7, U. S. C. A. Sec. 801, et seq.) is also part of the same general scheme.

**Indications are that the number of beneficiaries was considerably less than 3,000,000. For example, the votes set forth on page 210 of the Government's AAA brief show that the greatest number of contract signers voting were producers of corn and hogs, totalling, 745,415.

though there are exceptions, the tax is generally paid by the ultimate consumer of the commodities taxed. These commodities are; Wheat, Sugar, Tobacco, Hogs, Cotton, Field Corn, Paper, Jute, Peanuts and Rice. The ultimate consumers of these commodities embraces the entire population of the Nation. According to the 1930 census the population of the continental United States was 122,775,046. The July, 1934 estimate of the Census Bureau was 126,425,000. Thus taking the farmers who received the processing tax, at the over liberal estimate of 3,000,000, assuming them all to be heads of families and taking the average family to be four as per the 1930 census figures, the direct recipients of this money and their families did not exceed 12,000,000. This leaves, 114,425,000 people from whom the tax was exacted.

THE TRANSFER TO LESS THAN THREE MILLION PEOPLE FROM ONE HUNDRED FOURTEEN MILLION PEOPLE OF MORE THAN A BILLION DOLLARS DID NOT PROMOTE THE GENERAL WELFARE.

Under the legislation involved, not only has more than a billion dollars in taxes been transferred to less than 3,000,000 farmers from the other people of the Nation, but how many billions more have been transferred from these people to the farmers by reason of the higher prices* caused by the scarcity of the above-mentioned commodities due to the program of suppression of production and destruction embraced in this legislation, can only be conjectured. It is argued at length in the Government's brief in the AAA case and it was stated by the President in his speech at Chicago, on the day the AAA case was called for argument in this Court, that the tax promoted the general welfare because the farmer who received the benefit payment spent it for automobiles and other things and it was thus put in circulation in the channels of trade. To have any force whatsoever,

*A combination to produce high prices was said to be against public policy in *Standard Oil Co.* v. *United States*, 221 U. S. 1, 54, 58.

this argument must be based entirely on the utterly false assumption that the 114,000,000 people from whom this money was exacted, would not have also spent it and thus put it in circulation in the channels of trade. Most of the 114,000,000 people from whom the money was exacted, are people striving desperately to make a living and if this money had not been taken from them and given to the farmer, they would have spent it for living expenses, just as the farmer is alleged to have spent it and it would have been as fully and as effectively in circulation in the channels of trade.

A simple example will demonstrate this. If Peter has in his pocket $1,000 to spend for his living expenses during the current year and a bandit takes it away from Peter and gives it to Paul who buys an automobile and other things with the money, that does not have any more effect on the general volume of trade than if the robbery never happened, for the reason that Peter would have likewise spent the money and put it in circulation in trade, if he had not been robbed of it and the total trade so far as this $1,000 is concerned would have thus been the same.

The wealth of a country does not consist of its money in circulation, but of its tangible property and the AAA Act militated against the general welfare by destroying tangible property. Moreover, if there had been more tangible property to transport, the railroads would have had a greater freight tonnage and thus have had more money to disburse for labor and supplies. The same is true of a number of other industries.

The above clearly shows that any arguments to the effect that this tax increased the general income of the country or promoted the general welfare, are without any sound basis.*

The tax which was paid by the ultimate consumer was one which he was compelled to pay, irrespective of his in-

*Whether it indirectly promoted the special welfare of the 30,000,000 people who live on farms apart from less than 3,000,000 and their families who received payments under the Act, is highly debatable. If it did it was at the expense of the remaining 96,000,000 people of the country.

come. A man struggling for existence in the cities and in the rural towns and villages, was obliged to pay this tax when he bought such necessities of life as Wheat, Sugar, Tobacco and Cotton, even though he could not pay his other bills. The tax does not even have the support of the supposed social justice theory upon which socialism or share the wealth schemes rest, for it was not exacted from the rich for the benefit of the poor, but was exacted from the great masses of the people of the country, most of whom were never any better off than the farmers and most of whom, during the period the tax was exacted from them, were indeed not nearly so well off as the farmer to whom the tax was paid. It was not exacted solely for the benefit of poor farmers, but the millionaire lolling in luxury in the great cities who had a plantation in the South, as a hobby or plaything, was requested by the Department of Agriculture to suppress production on his plantation and was paid for the suppression of this production out of the money which the Government collected from the struggling average citizen upon basic commodities which he had to consume in order to live.*

TO HOLD THAT THE GOVERNMENT CAN NOT TAKE THE PROPERTY OF A CITIZEN WITHOUT DUE PROCESS OF LAW BUT THAT IF IT DOES SO TAKE HIS PROPERTY IT MAY KEEP IT, IS TO NULLIFY THE FIFTH AMENDMENT.

The Government will admit that it can not take the property of its citizens without due process of law. In this case it argues that if it has taken such property it may keep it. Although the argument is not put so bluntly, for all practical purposes, that is what it means because these amendments to the Agricultural Adjustment Act are so broadly drawn, that for all practical purposes, they prevent refunds. This was their conceded purpose and design. For example, Section 21(d)(2) provides that a claim for refund

*One case where a citizen of Michigan received $2,500 for suppressing the production of cotton on his Mississippi plantation, has come to the notice of the Amicus Curiae.

must be filed "by the person entitled thereto."* Under this provision the Department can throw out most of the refund claims filed, on the ground that the person filing them is not really entitled to the refund. This Act does not merely provide that if a processor has added the tax to the sale price he can not recover it but is much broader. It provides that he can not recover if he "has directly or indirectly, included such amount in the price of the article with respect to which it was imposed." This provision is so broad that if it should be incorporated in the income tax law, it would virtually prevent the refund of illegally collected income taxes. In the case of a taxpayer engaged in a merchandising business for one instance, such taxpayer collects all his money from his customers. Included in the money thus collected is his income and also out of the money thus collected he pays his income tax.

The question whether the tax has been passed on "indirectly" is an entirely different question than the question whether the price of the article sold would have been any greater had the tax not existed.

To hold that the Government has taken this money from the taxpayer without due process of law, but that having so taken it nevertheless it may keep the money, is to nullify this provision of the Fifth Amendment and render it of no protection to the citizen.

As this Court has held, Constitutional provisions for the protection of citizens are deep-rooted and substantial and not mere technicalities and citizens are not to be deprived of their protection by technicalities and what Congress cannot constitutionally do directly it cannot accomplish by indirection.**

All of which is respectfully submitted.

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*Other Acts use the words "by the taxpayer". The change is deliberately made to afford ground for throwing out claims.

***Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 581. *Macallen* v. *Massachusetts*, 279 U. S. 620, 629.